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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

No. 706

COURT SQUARE BUILDING, INC.,

Petitioner,

v.

THE CITY OF NEW YORK,

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK AND BRIEF IN SUPPORT THEREOF

M. Carr, Lawyer,
David Morrison,
Albert Foreman,
Counsel for Petitioner.

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STATUTES

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 706

IN THE MATTER OF THE APPLICATION OF
COURT SQUARE BUILDING, INC.,
Petitioner,

against

THE CITY OF NEW YORK,
Respondent

PETITION FOR WRIT OF CERTIORARI

To the Honorable Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Your petitioner, Court Square Building, Inc. respectfully submits this petition for writ of certiorari to review the decision of the Court of Appeals of the State of New York, 298 N. Y. 380 which modifies the judgment of the Appellate Division of the Supreme Court of the State of New York, First Department (273 App. Div. 441) and the final judgment entered thereon in the Supreme Court of the State of New York, in the Office of the Clerk of the County of New York, under date of February 11, 1949.

History of the Case

This proceeding was originally brought by the petitioner for an adjudication in accordance with Chapter 314, Section 4 of the Laws of the State of New York for 1945 which statute is known as the Emergency Rent Statute affecting office space in cities of the State of New York having a population of over 1,000,000.[1] The Statute limits the landlord to a so-called emergency rent which is defined as the rent payable under any agreement in force on June 1, 1944, plus 15% thereof. The Statute also provides that a landlord who claims that the emergency rent is inadequate may present a petition to the Supreme Court of the State of New York for the purpose of obtaining a rental in excess thereof.

The petitioner is the owner of a 23 story office building in the City of New York known as 2 Lafayette Street, Borough of Manhattan. The City of New York leased part of the premises in said building for the purpose of conducting therein all the functions of the Municipal Court of the City of New York. At the time of the proceeding the City occupied for such purposes part of the ground floor and all of the second to seventh floors inclusive. Petitioner had installed separate entrances and separate elevators so that the courtroom space was essentially a separate unit apart from the other space in the building.

On October 31, 1944, petitioner and the respondent had entered into a lease for the space in question for a period of three years from May 21, 1945, at an annual rental of $163,850.

On March 28, 1945, the Emergency Rent Statute above mentioned was enacted and went into effect on that day. The City thereupon refused to make payment of the rental provided for in the lease and insisted upon payment of the

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[1] The Statute is set forth in full in the Appendix.

emergency rent which was the former annual rental of $123,300, plus 15% thereof or a total of $141,795.

Petitioner then brought the instant proceeding to have it determined that: (1) the aforesaid Rent Control Act was not applicable to the City of New York and more particularly that the instant statute could not be construed to involve such police power as to nullify a contract made in accordance with then pre-existing law; and (2) that in any event the reasonable rental under the statute was the rental provided for by the existing lease.

The proceeding was originally tried at a Special Term of the Supreme Court of the State of New York. Special Term not only dismissed the petitioner's contention that the Rent Control Act was unconstitutional as applied to the City of New York, but also found that the emergency rental was the fair and reasonable rental (R. 67-68).

Petitioner then appealed to the Appellate Division of the Supreme Court of the State of New York wherein the order of Special Term was modified in the respect that the Court held the emergency rent not to be the fair and reasonable rental under the Statute and found that the fair and reasonable annual rental should be $155,265.72. The opinion of the Appellate Division is found in R. 407 to 413, and is published in the Official New York State Reports at 273 App. Div. 441.

Both petitioner and respondent then appealed to the Court of Appeals of the State of New York (R. 403 to 404A) and the judgment of the Appellate Division was modified in the respect only that the Court of Appeals fixed the reasonable rental at $143,560.95 per annum. The opinion of the Court of Appeals is appended to the record and has been published in the Official Reports of the State of New York, 298 N. Y. 380.

The Court of Appeals is the highest Court of the State of New York to which any appeal could be taken and the judgment of modification will remain final unless jurisdiction is taken by this Court.

Summary Statement of the Matter Involved

Petitioner is the owner of a 23 story office building in the City of New York. Prior to October 31, 1944 the City of New York had occupied approximately seven floors in petitioner's building for use as courtrooms, court clerks' offices, justices' chambers, etc., all in connection with the functions of the Municipal Court of the City of New York (R. 15-26). On October 31, 1944, your petitioner and the respondent entered into a lease for continued occupancy by the City of the space in question for courtroom purposes which lease was to commence for a period of three years from May 24, 1945, at an annual rental of $163,850 (R. 27-32).

On March 28, 1945 the State of New York enacted what has come to be known as the Emergency Rent Statute or Rent Control Act (Chapter 314 of the Laws of 1945) which affected business property. Prior thereto the State of New York had enacted similar legislation affecting commercial and loft space. As we have heretofore noted, the Rent Control Act provided that a landlord could obtain no greater rental than that in force on June 1, 1944 plus 15% thereof, unless increased by the Court or by arbitration. On June 1, 1944, the City of New York was paying an annual rental of $123,300 for the space in question. The lease calling for the payment of said rentals expired May 21, 1945. Thereafter the City of New York refused payment of the increased agreed annual rental of $163,850 and instead tendered its rent at the rate of $141,795 per annum, being the old rental of $123,300 plus 15% thereof (R. 11). Petitioner refused to accept payment of the rent at the

tendered rate and insisted upon the payment of the agreed rental (R. 31).

Petitioner at all times has contended that the Rent Control Act was not applicable to the City of New York and further that a municipality's contract could not be nullified retrospectively by a subsequent statute unless it involved a clear exercise of the police power as it might affect the municipality. Petitioner also raised the question as to the proper formula to be applied in finding what constituted a reasonable rental. Inasmuch as we believe that the jurisdiction of this Court depends solely on the constitutional questions involved, we will not burden the Court with the petitioner's contentions as to the reasonableness of the various rentals found by the different tribunals of the State of New York for every Court came to a different determination.

Special Term rendered no opinion with respect to the petitioner's contentions as to the constitutionality of the Act. The Appellate Division, however, did render an opinion with respect to the constitutional question, stating at pages 443 and 444 of its opinion, as follows (R. 407-413):

> "We think that the statute extends to the present tenancy and by definition includes space of the kind involved in this proceeding (L. 1945, ch. 314, Sec. 2). Its provisions are applicable to the renewal lease made by the parties prior to the effective date of the statute. (See Twentieth Century Associates *v.* Waldman, 294 N. Y. 571). In this connection it may also be said that no ground for evasion of the emergency rent law and its application to this case can be asserted by reason of the fact that the execution of such lease was authorized only at a fair and reasonable rent in accordance with the requirements of the Administrative Code of the City of New York (Secs. 384-3.0, 384-13.0)".

The Court of Appeals similarly passed upon the constitutional questions involved basing its decision on

Twentieth Century Associates v. *Waldman*, 294 N. Y. 571, appeal dismissed 326 U. S. 696, 697.

Jurisdiction of This Court to Grant Certiorari

Jurisdiction of this Court to review the aforesaid judgment is granted by Section 237(b) of the Judicial Code, 28 U. S. C. 344(b).

The decision sought to be reviewed was rendered by the Court of Appeals of the State of New York, the highest court of that State.

The decision concerns itself in a large measure with the application of the constitutional provisions safeguarding contract obligations which, if decided favorably to the petitioner, requires a reversal of the judgment of the Court of Appeals of the State of New York.

This application is made within the three months allowed by 23 U. S. C. 350. The order of the Court of Appeals was rendered January 13, 1949. In conformity with the Civil Practice Act of New York. the judgment of the Court of Appeals was made the judgment of the Supreme Court of the State of New York on February 11, 1949.

Constitutional Provisions Involved

1. Article I, Section 10 of the Constitution of the United States.

2. The Due Process Clause of the United States Constitution, 14th Amend., Sec. 1.

Questions Presented

1. Does the retroactive application of the Emergency Rent Act to a pre-existing lease between Petitioner and the City of New York impair the obligation of contracts within the meaning of Article I, Section 10 of the United States Constitution?

2. Does the retroactive application of the Emergency Rent Act to a pre-existing lease between Petitioner and the City of New York deprive the petitioner of its property without due process of law?

3. Is the retroactive application of the Emergency Rent Act to a pre-existing lease between Petitioner and the City of New York a valid exercise of the Police Power?

4. Can the City of New York, which has the power of eminent domain and condemnation, be the subject of an oppressive lease?

5. Did the Court of Appeals properly rule that the Rent Control Law as applied to the pre-existing lease between petitioner and the City of New York does not violate the constitutional prohibition against impairment of the obligation of a contract?

Reasons for Granting Petition

The Court of Appeals has passed on a Federal question of substance affecting the petitioner's constitutional rights. The Court of Appeals has in effect held that the State of New York has a right to pass a statute of such retroactive effect as to nullify a pre-existing contract between a citizen and a municipality. In so doing, the Court of Appeals held that the Rent Control Act did not constitute a violation of the constitutional prohibition against impairing the obligation of a contract, citing its prior decision in *Twentieth Century Associates* v. *Waldman*, 294 N. Y. 571, appeal having been dismissed by this Court in 326 U. S. 696, 697. There is no analogy between the instant case and the cited authority. It has been repeatedly held that the State in the exercise of its police power has a right to pass laws which affect pre-existing contracts of its citizens. That principle, however, has never been extended to include contracts

between a citizen and the State or any of the State's subdivisions.

The Court of Appeals has failed to give recognition to the underlying distinction between the necessity for the emergency legislation as it applies to contracts of lease between individuals and agreements of occupancy by the State or its subdivisions, all of which concededly have the power of eminent domain and condemnation and all of which have the right to obtain occupancy of any space desired at rentals to be fixed by the Court, a privilege not accorded to private citizens who must accordingly have the protection of the emergency rent laws. No conceivable emergency could exist insofar as the City of New York was concerned, since it could by the exercise of its conceded power of condemnation acquire any space it required for any period and let the Court fix the fair rental. It was because of the absence of a similar right in individuals that an emergency was decreed. Insofar as the City of New York is concerned, the declaration of an emergency was pure fiction. As applied to the City of New York the statute was wholly unnecessary and confiscatory.

It is respectfully submitted that as matters now stand the Court of Appeals in citing *Twentieth Century* v. *Waldman*, 294 N. Y. 571, in support of its decision, has made it appear that this Court has upheld the statute even as applicable to our situation.

Conclusion

Petitioner respectfully prays that a writ of certiorari may be issued out of and under the seal of this Court directed to the Court of Appeals of the State of New York, to the end that the judgment of the Court of Appeals may be reviewed and reversed on the constitutional questions above men-

tioned, and for such other and further relief as may be just and proper.

Dated: March 30, 1949.

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APPENDIX A

Art. I—Sec. 10.

No State shall enter into any Treaty, Alliance or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

APPENDIX B

14th Amendment, Sub. 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

APPENDIX C

Laws of New York.—By Authority

Chapter 314

An Act in relation to the regulation, control and stabilization of rents and rental agreements, and to proceedings for the recovery of possession of certain business space in cities having a population of more than one million, and to actions, proceedings and related matters involving unjust, unreasonable and oppressive rents or agreements for rent with regard to premises used or occupied as business space, and declaring a public emergency

Became a law March 28, 1945, with the approval of the Governor. Passed, three-fifths being present

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. *Unjust, unreasonable and oppressive leases and agreements for the payment of rent for office space* and retail stores and other business space in certain cities having been and now being exacted by landlords under stress of prevailing conditions accelerated by the war, *and an abundance of eviction proceedings against tenants having been commenced or threatened by landlords,* whereby breakdown has taken place in normal processes of bargaining and freedom of contract has become an illusory concept, and whereby there have come into existence conditions threatening to obstruct war production, and the production and distribution of essential civilian commodities, and the rendition of essential services, professional and otherwise, and to divert essential manpower, materials and transportation facilities, and to cause inflation, and all of the foregoing situations and conditions being a threat to the successful prosecution of the war and essential civilian activities, and to the public safety, health, and general welfare of the people of the state of New York, it is hereby declared that a public emergency exists, which is increasing in intensity without slackening and without promise of relief so long as present war conditions continue, and that action by the legislature is imperative and will not admit of delay. It is hereby found, therefore, as a matter of legislative determination, that for the duration of such emergency, the establishment of a maximum rent for office and retail store and other business space at a level of fifteen per centum above rents charged on June first, nineteen hundred forty-four or at a level otherwise determined as hereinafter provided, will curb the evils arising from such emergency and will accomplish the purposes hereof. This act is declared to be a measure designed to protect and promote the public health, safety and general welfare, to aid the successful prosecution of the war, and essential civilian activities, and to conserve manpower, essential materials and transporta-

tion facilities, and to prevent inflation, and is made necessary by an existing emergency.

§ 2. Unless expressly otherwise provided, whenever used in this act, the following terms shall mean or include:

(a) "Business space." All rental space in any city other than: (1) commercial space as defined in chapter three of the laws of nineteen hundred forty-five, or any act amendatory thereof; (2) dwelling space and meeting rooms in hotels, and dwelling space in rooming houses, apartment houses, dwelling and other housing accommodations; (3) piers, docks and wharf properties; and (4) places of public assembly.

(b) "Place of public assembly." A theatre, motion picture house or theatre, sports arena or stadium, or exhibition hall.

(c) "Emergency rent." The rent reserved or payable under any lease, agreement or tenancy of business space in force on June first, nineteen hundred forty-four, plus fifteen per centum of such rent; provided that if the business space was not used or occupied as business space on such date, the emergency rent shall be the reasonable rent therefor as business space on such date, plus fifteen per centum thereof, to be fixed by agreement, by arbitration, or by the supreme court upon the basis of the rent charged on such date for the most nearly comparable business space in the same building or other satisfactory evidence.

(d) "Landlord." An owner, lessor, sublessor, receiver, trustee, executor, assignee, or other person receiving or entitled to receive rent for the use or occupancy of the whole or a part of any business space.

(e) "Tenant." A lessee, sublessee, licensee, or other person entitled to the possession or to the use or occupancy of the whole or a part of any business space.

(f) "Rent." The consideration, including any bonus, benefit, or gratuity, charged or received by the landlord, his agents, or other representatives for the use or occupancy of the whole or any part of any business space.

(g) "Services." Repairs, decorating and maintenance, the furnishing of light, heat, steam, hot and cold water, telephone, elevator service, cleaning service, linen service, janitor service, the removal of refuse and any other facility or privilege connected with and furnished by the landlord for the use or occupancy of the business space.

(h) "War contractor." A person who is engaged in war work and manufactures and/or produces or sells vital war materials necessary to the active prosecution of the war under contract or sub-contract with one or more of the following: the army, the navy, the war shipping administration, the lend-lease agency, the defense plants corporation, or the defense supplies corporation.

(i) "Person." An individual, corporation, partnership, association, or any other organized group of individuals or the legal successor or representative of any of the foregoing.

(j) "Supreme court." A special term of the supreme court to be held in the county in which the business space is located.

(k) "City." A city having more than one million inhabitants.

§ 3. From and after the effective date of this act and during the continuance of the emergency as defined in section fourteen, any rent which exceeds the emergency rent shall be presumed to be unjust, unreasonable and oppressive. *Every landlord within twenty days after the effective date of this act shall furnish each tenant with an accurate statement of the amount of his emergency rent,* and in the case *of* business *space* not used or *occupied* on the *first day of June nineteen hundred forty-four,* such statement shall be furnished within twenty days after such rent shall be fixed or determined pursuant to subdivision (c) of section two hereof; and if a landlord shall fail, refuse or neglect to furnish any tenant with such statement within the time specified, no rent accruing shall be collectible by such landlord during the period he is in default. Acceptance by a

landlord of payment of the emergency rent by a tenant shall not be construed to be a waiver by such landlord of his right to seek increased rent from such tenant as hereinafter provided.

§ 4. A rent, exceeding in amount the emergency rent, may within the limitations specified by this section, be fixed by arbitration or by the supreme court. The rent to be so fixed shall be a reasonable rent based on the fair rental value of the tenant's business space as of the date the application to the supreme court or submission to arbitration is made. In the determination of the amount of such reasonable rent: (a) due consideration shall be given to the cost of maintenance and operation of the entire property (including land and building in which such business space is located) including amount paid for taxes assessed against such property, and to the kind, quality and quantity of services furnished, but excluding amortization or interest paid or accrued on any incumbrances thereon; (b) such rent shall be fixed in such manner that it shall not exceed a fair and reasonable proportion of the *gross rentals* from all the business space in the entire building, giving due consideration to the amount and character of the business space used or occupied by such tenant, provided, however, that the *gross rentals* from all such business space shall not exceed a fair and reasonable proportion of the gross rentals from the entire building.

A net annual return of six per centum on the fair value of the entire property including the land plus two percentum of principal for amortization of any mortgages thereon *shall be presumed to be a reasonable return.* The assessed valuation of the entire property, including land and building, as shown by the latest completed *assessment*-roll of the city shall be *presumed to be the fair value of the premises,* but other lawful evidence of the fair value may be offered and received. In any proceeding or arbitration under this section, the landlord within five days after written demand by the tenant or within such time as the arbitrators or the supreme court upon good cause shown may determine, shall serve upon the tenant a verified bill of particulars, setting forth the gross income derived from the entire building

during the preceding year, the names and addresses of all tenants, the rental charged each tenant and how payable, the consideration paid by the landlord for the entire property including the land, if he be the owner thereof, or if he be a lessee the name and address of the lessor and the rent agreed to be paid; the assessed valuation of the property as shown by the latest completed assessment-roll of the city, separately showing the amount of the assessment on the building and the amount of the assessment on the land; the cost of maintenance and operation of the building during the preceding year, the kind, quality and quantity of services furnished during such year; and such other facts as the landlord claims affect the net income of the entire building, or the reasonableness of the rent to be charged. Issue shall not be deemed to be joined in any proceeding under this section until the bill of particulars is served upon the tenant. Upon failure to serve the bill of particulars upon the tenant within the time limited, the proceeding or arbitration shall be dismissed upon motion of the tenant. The provisions of article eighty-four of the civil practice act shall apply to any controversy submitted to arbitration pursuant to this section. As a condition precedent to being heard in any proceeding or arbitration under this section, the tenant must pay to the landlord the emergency rent on each date when the rent is due under the terms of his lease, rental agreement or tenancy. Nothing in this act shall be construed to require submission of any controversy to arbitration. Any landlord who shall wilfully demand or accept a rent in excess of the emergency rent, or a rent fixed pursuant to section four of this act, shall forfeit the succeeding month's rent.

In lieu of the provisions contained elsewhere in this section for determining and fixing rent, the tenant and the landlord may fix a reasonable rent by written agreement, signed by both the tenant and the landlord, provided:

(a) that such tenant used or occupied the same space on the effective date of this act; and

(b) that such written agreement contains a statement setting forth:

(i) the amount of the emergency rent for the tenant's space:

(ii) a statement that the landlord has advised the tenant prior to the making of such agreement of his right to continue payment of the emergency rent until modified by arbitration or by the supreme court pursuant to section four of this act; and

(iii) a statement that the tenant, within sixty days after the effective date of such agreement, may cancel such agreement by notice to the landlord by registered mail enclosed in a securely sealed post-paid wrapper, addressed to the other party at his last known address and requiring a return receipt.

§ 5. *Nothing contained in this act shall authorize a landlord to seek, demand or receive increased rent, (a) under any lease or* rental agreement made prior to the effective date of this act *wherein the rent reserved does not exceed the emergency rent;* or, (b) under any lease or rental agreement made after the effective date of this act wherein the rent reserved is less than the emergency rent.

§ 6. No proceeding shall be instituted or maintained, during the continuance of the emergency declared by this act, to recover possession of any business space for or on account of a default in payment of rent, unless the petitioner shall allege in the petition and prove to the satisfaction of the court: (a) that the rent charged is not greater than the emergency rent for such business space or such greater rent therefor as may have been fixed pursuant to section four of this act; and (b) that the services furnished by the landlord to the tenant have not been unreasonably diminished since the effective date of the existing lease, rental agreement or tenancy. To the extent that the rent charged is in excess of the emergency rent, or such greater rent as may have been fixed pursuant to section four of this act, the tenant may interpose the defense that the rent charged is unjust, unreasonable and oppressive and, if such defense be interposed, the rent charged, to the extent of such excess, shall be uncollectible.

§ 7. In any action to recover rent for business space accruing during the period of the emergency, it shall be a defense that such rent is unjust, unreasonable and oppressive if such rent is in excess of the emergency rent or any rent which may be fixed pursuant to section four of this act, and to the extent of such excess the same shall be uncollectible. *The tenant may interpose the defense that the rental value* of the business space *has been reduced by* reason of *an unreasonable diminution of services,* and to the extent that the court shall find that such services have been so diminished, the value thereof shall be allowed in reduction of the rent charged and shall be uncollectible; or, in the alternative, the tenant shall be entitled to a cause of action to recover a proportionate amount of the rent paid.

§ 8. So long as the tenant continues to pay the rent to which the landlord is entitled, under the provisions of this act, no tenant shall be removed from any business space, by action or proceeding to evict or to recover possession, by exclusion from possession, or otherwise, nor shall any person attempt such removal or exclusion from possession, notwithstanding that such tenant has no lease or that his lease or other rental agreement has expired or otherwise terminated, and notwithstanding the issuance of any order to dispossess, warrant or process prior to the effective date of this act, and regardless of any contract, lease, agreement or obligation heretofore or hereafter entered into which is inconsistent with any of the provisions of this act, unless:

(a) The tenant has unreasonably refused the landlord access to any part of the business space for the purpose of inspection or of showing such space to a prospective purchaser, mortgagee, or prospective mortgagee, or other person having a legitimate interest therein; provided, however, that such refusal shall not be ground for removal or eviction if such inspection or showing of the business space is contrary to the provisions of the tenant's lease or other rental agreement; or

(b) The tenant (1) has violated a substantial obligation of his lease, rental agreement or tenancy, other than an

obligation to pay rent, and has continued or failed to cure such violation after written notice by the landlord that the violation cease, or (2) is committing or permitting a nuisance or is using or permitting a use of the business space for illegal purposes; or

(c) The landlord seeks in good faith to recover possession for the immediate purpose of demolishing the building with the intention of constructing a new building, and the plans for such construction have been approved by the proper authorities, if such approval is required by law. If the landlord shall fail to start the demolition of the building within ninety days after the removal of the tenant, or if after having commenced the demolition of such building, shall fail or neglect to prosecute the work with reasonable diligence, he shall, unless for good cause shown, be liable to the tenant for all damage sustained on account of such removal. In addition to any other damage sustained, the cost of removal of plant and property shall be a lawful measure of damage; or

(d) The landlord owned or acquired an enforceable right to buy or take possession of the building on or before the effective date of this act and seeks in good faith to recover possession of the business space for his immediate and personal use; or possession is sought by a person who acquires title to the building subsequent to the effective date of this act, and who likewise seeks in good faith to recover possession of the business space for his immediate and personal use; provided, however, that in either such event, such person shall have an equity in the property of not less than twenty-five per centum of the purchase price; and provided further, that nothing in this subdivision contained shall authorize the dispossession of a tenant during the term of his lease by his landlord or by any such subsequent purchaser unless by the terms of the lease the privilege is reserved to terminate the lease upon sale of the building; and provided further that no landlord shall be entitled to invoke the provisions of this subdivision unless he shall possess an interest of not less than fifty per centum of the whole investment in the business which he proposes to carry

on in such space. If the landlord shall fail, after thirty days after dispossessing a tenant under the provisions of this subdivision, to occupy such space and actively to conduct such business therein, or if the landlord shall lease or rent such space to or permit occupancy thereof by a third person within a period of six months after such dispossession, he shall be liable to the tenant for all damages sustained on account of such removal. In addition to any other damage, the cost of removal of plant and property shall be a lawful measure of damage; or

(e) The tenant, whose lease or rental agreement has expired or shall thereafter expire during the continuance of the emergency declared by this act, has refused, subsequent to the date this act takes effect and within a period of six months prior to such expiration, to execute, upon demand of the landlord, a renewal of the prior lease or rental agreement for a further term of like duration or for such shorter term as the landlord may elect, on substantially similar terms and conditions as are contained in such prior lease or rental agreement, provided that the terms and conditions of such renewed lease or rental agreement are not inconsistent with any of the provisions of this act, and provided further that the rent reserved in such renewed lease or rental agreement may be any amount not in excess of the emergency rent for such tenant's business space. The landlord shall not be entitled to seek a fixation of rent pursuant to section four of this act where the rent reserved in any such renewed lease or rental agreement is less than the emergency rent; or

(f) The tenant occupies business space in a building required to be demolished in order to carry out a housing or rehabilitation project instituted under the public housing law or the redevelopment companies law, or section eighty-four of the insurance law.

(g) The tenant, being in possession after the expiration of the term of a written lease or rental agreement, and not being a war contractor, occupies business space which the landlord has leased or rented to a war contractor for a term

to commence in the event of and within a reasonable time after the dispossession of the tenant pursuant to the provisions of this subdivision. The preference in occupancy created by this subdivision for the purpose of aiding the war effort may be enforced in a summary proceeding brought by the landlord pursuant to article eighty-three of the civil practice act, provided that it shall be established to the satisfaction of the court that the war effort will be furthered by the granting of an order dispossessing the tenant in order to make such space available to the war contractor. In no event, however, shall any tenant be evicted under or pursuant to the provisions of this subdivision, whether or not his lease or rental agreement has expired, who is: (1) a war contractor; (2) an agency of the federal government, the state, the city, or any county; or (3) a corporation or association organized exclusively for religious purposes.

§ 9. In the case of any lease or rental agreement for use or occupancy of business space, which lease or rental agreement was entered into for a term commencing subsequent to the effective date of this act by a tenant who occupied such space under a prior lease or rental agreement, the expiration date of which immediately precedes the date of the commencement of the subsequent lease or rental agreement, and the term of which subsequent lease or rental agreement exceeds the term of such prior lease or rental agreement, the supreme court, upon action commenced by the tenant within sixty days after the effective date of this act, may abridge the term of such subsequent lease or rental agreement, as justice shall require, but in no event so that such term shall be less than that of the prior lease or rental agreement, provided that the tenant shall establish that such subsequent lease or rental agreement was, on the date of its execution, unjust, unreasonable and oppressive as to any of the terms and provisions thereof other than the rent reserved therein.

§ 10. No landlord shall be answerable in damages or otherwise for failure to give possession to a new tenant not in possession where the tenant in possession is permitted to hold over by virtue of any of the provisions of this act.

§ 11. Rents are frozen and stabilized as of the effective date hereof and in the manner provided herein, and nothing contained in this act shall create any claim or cause of action in favor of a tenant against a landlord to recover moneys paid as rent for business space prior to the effective date of this act.

§ 12. Any waiver of any of the provisions of this act shall be unenforceable and void.

§ 13. To the extent that the provisions of this act are inconsistent with the provisions of any general, special or local law or charter provisions, the provisions of this act shall be controlling. Any lease wherein the specified rent or any part thereof is variable according to volume or other criteria of volume of the tenant's business shall continue without change, but where such lease provides for the payment of a fixed, basic or minimum rent, such fixed amount shall be subject to the provisions of this act. If any provision of this act or the application thereof to any person or circumstance is held invalid the remainder of the act and the application of such provisions to other persons or circumstances shall not be affected thereby.

§ 14. The emergency herein described is hereby declared to continue until July first, nineteen hundred forty-six.

§ 15. This act shall take effect immediately.

STATE OF NEW YORK,
Department of State, ss:

I have compared the preceding with the original law on file in this office, and do hereby certify that the same is a correct transcript therefrom and of the whole of said original law.

THOMAS J. CURRAN,
Secretary of State.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

Point I

The Rent Control Act, Chapter 314 of the Laws of 1945 of the State of New York, cannot constitutionally apply to the contracts of the City of New York made prior to the enactment of the statute.

The constitutionality of the Rent Control Act as applied to the instant lease between Petitioner and the City of New York has been upheld by the Court of Appeals of the State of New York on the authority of *Twentieth Century Associates* v. *Waldman*, 294 N. Y. 571, appeal dismissed by this Court 326 U. S. 696. In the cited case, the companion statute, Chapter 3 of the Laws of 1945 of the State of New York, affecting commercial property, was before the Court.* In that case the Court construed the statute as retroactively applicable to leases between private citizens and rejected all contentions as to any conflict with those provisions of the 14th Amendment which declare that no state shall deprive any person of property without due process of law, as well as Article I, Section 10 of the Constitution, which prohibits a state from impairing the obligation of contracts.

It is firmly established that while a statute may be valid as to one set of facts, it may nevertheless be invalid as to another. *Nashville, Chattanooga & St. Louis Ry.* v. *Walters*, 294 U. S. 405. We are not dealing with any abstract philosophical theory but with the very practical question as to whether or not the City of New York could possibly

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* Chapter 3 of the Laws of 1945 deals with loft, store and manufacturing space, commonly referred to as Commercial Property.

Chapter 314 of the Laws of 1945 deals with office space, commonly referred to as Business Property.

Both laws, however, are otherwise identical for purposes of this Court's consideration.

claim that it was one of the class of tenants to whom the Rent Control Act could properly apply in cases where pre-existing contractual rights were involved. Though constitutional as applied to private leases, the Rent Control Act clearly contravenes the Federal Constitution when applied to a lease between a subdivision of the State and its citizens. That a statute may have such a dual aspect has been held by this Court in *Watson* v. *Buck*, 313 U. S. 387.

The basis of the decision in *Twentieth Century Associates* v. *Waldman, supra*, is found in the declaration of the legislature that an emergency existed which threatened the public health, safety and general welfare of its citizens.

The Court of Appeals stated that the legislature had found that a public emergency existed because "of the exaction by landlords of unjust, unreasonable and oppressive agreements for the payment of rent with regard to certain type of commercial real property. * * * As between landlords and tenants in this situation freedom of contract has become an illusory concept." The Court then concluded, "In light of the emergency which called into play the police powers of the State in this case, we are unable to say that the measures taken in the public interest were unreasonable or inappropriate to curb the evils arising from the emergency and to accomplish the public purposes declared in the statute."

It is obvious that the foregoing, however valid its application with respect to private citizens, has no application and at no time had any application to the City of New York as a tenant. It is conceded that at all times the City of New York had the power of eminent domain to the same extent as the State had such powers. It could condemn a leasehold and it could condemn anything from a room to a building. In fact, rather than the landlord being the potential oppressor, the City of New York at all times had it within

its power to oppress by condemning all or any part of any building and make payment of such rental as the Court might deem just and proper. It could never be oppressed in the sense which sanctioned the constitutionality of the statute as applied to leases between citizens.

The Federal Government has found no problem in taking leases under its power of eminent domain, as is obvious from the case of *United States* v. *Petty Motor Company*, 327 U. S. 372, where this Court said at page 375:

> "These facts, we conclude, resulted in the taking by the United States of the temporary use of the building until June 30, 1945. When the shortening of the term is wholly at the election of the lessee, the term of a leasehold for the purpose of determining the extent of the taking must be considered to be its longest limit."

Also the case of *United States* v. *General Motors*, 323 U. S. 373, where this Court said at page 374:

> "The problem involved is the ascertainment of the just compensation required by the Fifth Amendment of the Constitution, where, in the exercise of the power of eminent domain, temporary occupancy of a portion of a leased building is taken from a tenant who holds under a long term lease."

The New York Courts have recognized the propriety of the exercise of the power of eminent domain in taking leaseholds for temporary periods and for parts of a building.

Weitzner v. *Stitchman*, 271 App. Div. 255.

By the General City Law of the State of New York, the City was granted the power:

> "To take, purchase, hold and lease real and personal property within and without the limits of the city, and acquire by condemnation real and personal property within the limits of the city, for any public or munici-

pal purpose * * *" (General City Law, Sec. 20, Subdiv. 2).

Chapter 15, Section 381 of the New York City Charter reads as follows:

> "Authority to Acquire Real Property—The city may acquire title in fee to real property or any interest therein whenever required for any public or municipal use or purpose or for the promotion of public utility, comfort, health, enjoyment or adornment. Such title or interest shall be acquired according to law by purchase, condemnation or otherwise."

The Administrative Code of the City of New York, Chapter 929 of the Laws of 1937, under Title B, Consolidated Condemnation Procedure, which deals with the exercise by the City of New York of the power of eminent domain by condemnation, defines the words "Real Property" under Section B15-1.0, Subdiv. 6, as including all lands and improvements, easements and hereditaments, and "every estate, interest and right * * * including terms of years and liens," etc.

The practicability of condemnation for rental use of parts of the interior of a building is obvious from the facts set forth in the case of *Weitzner* v. *Stitchman* (*supra*), where the legislature adopted an Act for Emergency Housing for Veterans, and others, and established a Housing Board, state-wide, with authority to acquire, among other things, "(a) Any lands or structures suitable for emergency housing, whether publicly or privately 'owned'." Under that Act, the Board, on May 8th, 1946, took steps to condemn various apartments in a building known as The Breakers Hotel, at Long Beach, "for a period ending the 30th day of April, 1947, unless sooner terminated in whole or in part," etc. (*Weitzner* v. *Stitchman, supra,* p. 257). The landlord objected to it on several grounds, including the difficulty in

determining the compensation. The Court, referring to the United States cases, brushed aside all objections and held that the condemnation was proper.

Are the parties here in a position where the City of New York could be oppressed? To turn a part of the building into a Municipal Court involved an expense of $150,000. When the Municipal Court moves out, it will be necessary to reconstruct the building so as to restore it to its original floor space for offices, and that expense of course will fall on petitioner. Where is the pressure here as between the petitioner and the respondent?

It is both unreasonable and unthinkable to assume that the legislature had in mind that the City of New York might be oppressed in making a lease for a governmental function, or that the processes of bargaining and freedom of bargaining have become an illusory concept with reference to it. If the City was not satisfied with its bargaining powers, it could condemn whatever it wanted and limit the rental to what the Court might allow.

Point II

The lease was made under and pursuant to a previous statute. No retrospective law not in the exercise of police power affecting the public health, morals, comfort and safety can destroy it.

The Laws of 1937, Chapter 929, creating an Administrative Code for the City of New York, provide under Chapter 15, Sec. 384-3.0 that the Board of Estimate

> "upon the report of the Bureau of Real Estate, and upon such further inquiry as such board, in its discretion, may make, may authorize a lease of such premises as shall be specified in its resolution, at the rent therein set forth for a period not exceeding five years * * *. Such lease, however, shall not be authorized except

> at a fair and reasonable rent, and unless the board is satisfied, and shall so express, that it would be for the interests of the City that a lease of the premises for the purposes specified should be made."

Also, under the same Section 384-13.0, provision is made for a Bureau of Real Estate of the Board of Estimate, one of its functions being (subdivision 3):

> "After due inquiry to be made by it, present to the board, a statement, in writing, of the facts relating to any real property proposed to be leased, the purpose for which such property is required by the city, with its opinion, and the reasons therefor, as to the fair and reasonable rent of such premises. The bureau shall enter into, on behalf of the city, any lease, authorized by the board, of property leased to the City."

This procedure was followed exactly in the making of the instant lease (R. 252-259).

Subsequent legislation could not invalidate this lease unless that legislation involved a proper exercise of the state's police power as affecting the public health, morals, comfort or safety. It is elementary that in the absence of a valid exercise of such police power, such a statutory enactment would violate the provisions of the United States Constitution that no state shall pass any law impairing the obligations of contracts.

We fully appreciate the wide range and scope with which this Court has invested the police power of a state. Yet this Court has always required that it be shown that a vital public interest be present going to the very essence of the public welfare. Especially so has this been the rule where vested contract rights were involved. In *Treigle* v. *Acme Homestead Assn.*, 297 U. S. 187, this Court said at page 197:

> "Though the obligations of contracts must yield to a proper exercise of the police power, and vested rights

cannot inhibit the proper exertion of the power, it must be exercised for an end which is in fact public and the means adopted must be reasonably adopted to the accomplishment of that end and must not be arbitrary or oppressive."

Obviously no one can properly urge that the reduction of a municipality's rent by repudiation of a prior lease is an act for the public interest. Economy has never been proper justification for invocation of the police power so that a sovereign's contracts might be nullified. In the *Gold Clause Cases*, 294 U. S. 330, a far greater principle was involved, yet this Court, although upholding the Gold Clause resolutions with respect to private contracts, nullified them when the Government sought to apply them to its own obligations, stating at pages 352-3:

> "But Congress was without power to reduce expenditures by abrogating contractual obligations of the United States. To abrogate contracts in the attempt to lessen government expenditure, would be not the practice of economy but an act of repudiation."

The City of New York had no vested right to pay depression rentals. In October 1944 the City made a three-year lease to begin May 31, 1945, agreeing to pay $163,850 per year. It was neither forced nor coerced, for if it felt the rental oppressive, it could have condemned the premises. Its possession could not be disturbed nor could it be coerced into payment of a rental it did not deem justified. Yet by force of legislation directed to the inequities and economic disturbance affecting private parties, the City has by the decisions to date fallen heir to a windfall of the difference between the agreed rental of $163,850 per annum and what the Court of Appeals deems the statutory allowance of $143,560.95. The dignity of a municipality's commitment has thus been sacrificed to a savings of $20,000 per annum. The alleged justification is the police power,

yet the very preamble to the Rent Control Act contemplates a situation completely foreign to the City's status as a tenant. It is respectfully submitted that the police power cannot be interposed in this case to nullify a pre-existing lease between petitioner and the City of New York.

Respectfully submitted,

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Supreme Court of the United States

OCTOBER TERM, 1948

No. 706

COURT SQUARE BUILDING, INC.,

Petitioner,

vs.

THE CITY OF NEW YORK,

Respondent.

BRIEF OF THE CITY OF NEW YORK IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

May 10, 1949.

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BRIEF OF THE CITY OF NEW YORK IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Preliminary Statement

Petitioner, Court Square Building, Inc., seeks review of an order of the Court of Appeals of the State of New York, which modified an order of the Appellate Division of the Supreme Court of the State of New York, First Department, and of an order entered thereon in the Supreme Court of the State of New York on February 11, 1949 (R. 405-406, 418-420).

Reported Below:

298 N. Y. 380;
273 App. Div. 441.

Summary Statement of Facts

Petitioner is the owner of a 23-story office building in the City of New York. Since 1935, the respondent has occupied the lower seven floors of the building for the use

of the Municipal Court of the City of New York, consisting of court rooms, jury rooms, clerks' offices, record rooms, and related quarters (R. 262-268).

The premises were occupied by the City under leases which were renewed from time to time. Between May 1, 1942 and April 30, 1945, the rent reserved was $123,300 per annum (R. 15-21). In May, 1944, the Director of Real Estate of the Board of Estimate of the City of New York entered into negotiations with the petitioner for a renewal of the lease. Following a demand by petitioner for a new annual rent of $173,850 for a three-year lease, the Director of Real Estate tried, without success, to find other quarters for the Municipal Court (R. 253-254). In August, 1944, petitioner offered to renew the lease for three years at an annual rent of $163,850, and on the recommendation of the Director of Real Estate, the Board of Estimate, on October 19, 1944, adopted a resolution authorizing him to execute a renewal of the lease on those terms. The renewal lease was executed on October 31, 1944, effective May 1, 1945 (R. 27-29).

On March 28, 1945, the New York State Legislature enacted the Emergency Business Space Law (L. 1945, ch. 314), effective on that date. So far as is pertinent here, its provisions are as follows: Any rent which exceeds the emergency rent is presumed to be unjust, unreasonable and oppressive (§3). Emergency rent is defined as the rent payable under an agreement in force on June 1, 1944, plus 15 per cent thereof (§2, subd. c). Within twenty days after the effective date of the statute, a landlord is required to furnish each tenant with a statement setting forth the amount of the tenant's emergency rent (§3).

Under §4, a landlord who claims that the emergency rent is inadequate may present a petition to the Supreme Court of the State of New York for the purpose of obtaining a rent in excess thereof. It provides that a net return of six per cent on the fair value of the property plus two per cent for amortization of mortgage principal is presumed to be reasonable. If the income from the property is insufficient to provide a fair net return, the Court may fix a rental to be paid by the tenant, in excess of the emergency rent and proportionate to the gross rentals from the property.

Under §5, if the tenant is in possession under an unexpired lease, the landlord is entitled to either the rent reserved in the lease or the emergency rent, whichever is less.

On April 13, 1945, petitioner served a notice on The City of New York, pursuant to §3, setting forth the amount of the City's emergency rent (R. 11, 31-32). The emergency rent amounted to $141,795 per annum, which was 115 per cent of the 1944 rent. The City paid the emergency rent for May, 1945, which was acceped by the petitioner, without prejudice.

On May 2, 1945, petitioner instituted this proceeding pursuant to §4 of the statute, in which it sought to have the City's rent fixed at the sum of $163,850 per annum, as in the renewal lease. The petition alleged that the emergency rent was not a reasonable rental and that the emergency rent statute had "no application to the rights and obligations existing between the Petitioner and The City of New York" (R. 11-12).

At the trial in the Supreme Court of the State of New York, petitioner contended that the rent statute was inap-

plicable because (1) the premises occupied by the City were not business space, (2) because the City could, in the exercise of the power of eminent domain, acquire a leasehold of the premises, and (3) because the statute would be unconstitutional if given retroactive effect so as to affect the renewal lease which was executed prior to March 28, 1945, the effective date of the statute (R. 78-83). The Court held that the statute was a valid exercise of the State's police power and that it was applicable to the space occupied by the City. It held that the City's emergency rent was fair and reasonable and, accordingly, dismissed the petition (R. 76, 83).

The Appellate Division of the Supreme Court, First Department, modified the order of the Supreme Court, New York County and fixed the City's rent at the sum of $155,265.72 per annum (R. 406). With respect to the applicability of the statute, it said (R. 1222):

> "We think that the statute extends to the present tenancy and by definition includes space of the kind involved in this proceeding (Unconsolidated Laws, §552) [L. 1945, ch. 314 §2(a)]. Its provisions are applicable to the renewal lease made by the parties prior to the effective date of the statute. (See *Twentieth Century Associates* v. *Waldman*, 294 N. Y. 571.)"

The Court of Appeals held that the City's rent had been incorrectly computed by the Appellate Division and fixed the rent at $143,560.92 per annum (R. 432) Holding that the statute was applicable to the City's tenancy the Court said (R. 426-427):

> "The landlord's first contention upon this appeal is that the Business Rent Control Law does not

apply to the City of New York as a tenant. In support of that position it is argued that, inasmuch as a lease was executed prior to the effective date of the statute (March 28, 1945), the rent control law cannot be held applicable for it would then constitute a violation of the constitutional prohibition against impairing the obligation of a contract. The same argument was advanced in *Twentieth Century Associates* v. *Waldman* (294 N. Y. 571) where this court considered the constitutionality of the Commercial Rent Control Law (L. 1945, ch. 3). The statute there involved differed from the statute now before us in that it covered different types of property, had a different effective date and a different date for the freezing of rents. In other respects the Commercial Rent Control Law and the Business Rent Control Law are alike."

And continuing:

"In the *Twentieth Century Associates* case (*supra*) the Commercial Rent Control Law was held to be a constitutional exercise of the police power and the statute there being considered was held to be applicable to leases executed prior to its effective date. We regard the rule of that case as decisive of the challenge upon this appeal by the petitioner-landlord to the constitutional validity of the Business Rent Control Law. In that connection we note that the enactment of the statute last mentioned was prompted by the same emergency—arising from the prevalence of the same conditions affecting public welfare—that caused the enactment of the Commercial Rent Control Law (compare L. 1945, ch. 314, §1, with L. 1945, ch. 3, §1)."

The Court held, further:

"The petitioner-landlord also claims that because the city possesses the power of eminent do-

> main, it does not need, and should not be allowed, the protection of the Business Rent Control Law. We find nothing in the statute which indicates that it applies only to certain types of tenants—excluding those, such as cities, which have the right of eminent domain. Indeed, under subdivision (g) of section 8 *id.*—which defines the circumstances in which tenants may be evicted thereunder—it is provided: 'In no event, however, shall any tenant be evicted under or pursuant to the provisions of this subdivision * * * who is * * * an agency of the federal government, the state, the city, or any county'. It would thus seem that the need for specifically excluding 'an agency of * * * the city', when reference is made to the rights under this section of 'any tenant', is an indication that the Legislature, in referring repeatedly to tenants throughout the statute, intended to include municipalities. Accordingly, we are in agreement with Special Term and the Appellate Division that the provisions of the Business Rent Control Law are constitutional and applicable to the city's tenancy here involved."

Thus, all the Courts were in agreement that the space occupied by the City was business space as defined in the statute, and that the amount of rent which the City was required to pay was to be determined in accordance with the statutory formula. Petitioner does not contend that the rent as determined by the Court of Appeals was incorrect (Brief, p. 5).

Petitioner's contention is that the rent statute impairs the obligation of a contract and deprives it of its property without due process of law, and is, therefore, unconstitutional. As we shall show, the statute was attacked upon both these grounds, and its constitutionality upheld, in *Twentieth Century Associates* v. *Waldman, supra,* 294 N. Y. 571, appeal dismissed, 326 U. S. 696, 697.

ARGUMENT

The Emergency Business Space Law (L. 1945, ch. 314) was enacted by the State of New York in the proper exercise of its police power. Its constitutional validity is no longer open to question, in view of the decisions in *Twentieth Century Associates* v. *Waldman*, 294 N. Y. 571, appeal dismissed, 326 U. S. 696, 697 and *Finn* v. *415 Fifth Ave. Co.*, 153 F. (2d) 501, cert. den. 328 U. S. 838.

The statute in question was enacted by the New York State Legislature in March, 1945 (L. 1945, ch. 314). The conditions which prompted its enactment and the evils it sought to overcome are described in §1 in the following language:

> "Unjust, unreasonable and oppressive leases and agreements for the payment of rent for office space and retail stores and other business space in certain cities having been and now being exacted by landlords under stress of prevailing conditions accelerated by the war, and an abundance of eviction proceedings against tenants having been commenced or threatened by landlords, whereby breakdown has taken place in normal process of bargaining and freedom of contract has become an illusory concept, and whereby there have come into existence conditions threatening to obstruct war production, and the production and distribution of essential civilian commodities, and the rendition of essential services, professonal and otherwise, and to divert essential manpower, materials and transportation facilities, and to cause inflation, and all of the foregoing situations and conditions being a threat to the successful prosecution of the war and essential civilian activities, and to the public safety, health, and general

> welfare of the people of the state of New York, it is hereby declared that a public emergency exists, which is increasing in intensity without slackening and without promise of relief so long as present war conditions continue, and that action by the legislature is imperative and will not admit of delay. It is hereby found, therefore, as a matter of legislative determination, that for the duration of such emergency, the establishment of a maximum rent for office and retail store and other business space at a level of fifteen per centum above rents charged on June first, nineteen hundred forty-four or at a level otherwise determined as hereinafter provided, will curb the evils arising from such emergency and will accomplish the purposes hereof. This act is declared to be a measure designed to protect and promote the public health, safety and general welfare, to aid the successful prosecution of the war, and essential civilian activities, and to conserve manpower, essential materials and transportation facilities, and to prevent inflation, and is made necessary by an existing emergency."

Concerning police power statutes of this type, this Court has said (*Veix* v. *Sixth Ward Bldg. & Loan Ass'n.*, 310 U. S. 32, 39 (1940)):

> "In *Home Building & Loan Association* v. *Blaisdell* this Court considered the authority retained by the State over contracts 'to safeguard the vital interests of its people.' The rule that all contracts are made subject to this paramount authority was there reiterated. Such authority is not limited to health, morals and safety. It extends to economic needs as well. Utility rate contracts give way to this power, *as do contractual arrangements between landlords and tenants.*" (Italics supplied.)

In January, 1945, the New York State Legislature enacted the Emergency Commercial Space Law (L. 1945, ch. 3). Except for the types of property involved and the "rent freeze dates", that statute contains provisions identical with the Emergency Business Space Law (L. 1945, ch. 314) involved herein. In *Twentieth Century Associates* v. *Waldman,* 294 N. Y. 571 (1945), appeal dismissed, 326 U. S. 697 (1946), the constitutionality of the commercial rent statute was involved. The plaintiff in that action attacked the retroactive aspect of the statute and claimed that it violated the obligation of a pre-existing contract and that it deprived the plaintiff of its property without due process of law, contrary to the United States Constitution, Art. I, Section 10, and the 14th Amendment.

The Court of Appeals upheld the validity of the statute. After describing the conditions which prevailed prior to the enactment of the statute the Court of Appeals said (297 N. Y., at p. 580):

> "At the close of the last war a similar emergency arose in connection with housing conditions in New York City and a group of statutes were enacted to meet the crisis (L. 1920, chs. 136, 942-943). The validity of these laws was considered by this court and by the Supreme Court of the United States and they were sustained as validly enacted in the exercise of the police powers of the State, notwithstanding 'the impairment of the obligation of the contract of the lessees to surrender possession' of the leased premises (*People ex rel. Durham R. Corp.* v. *La Fetra,* 230 N. Y. 429; *Marcus Brown Co.* v. *Feldman,* 256 U. S. 170, 198; *Levy Leasing Co.* v. *Siegel,* 258 U. S. 242)."

With respect to the due process clause (U. S. Constitution, 14th Amendment) the Court said (294 N. Y. at p. 582):

> "Our conclusion that the act was within the police power of the State disposes of the contention that the act violates the due process clause * * *."

The appeal taken by the plaintiff to this Court was dismissed for want of a substantial federal question, 326 U. S. 697 (1946), the Court citing *Block* v. *Hirsh*, 256 U. S. 135 (1921), *Marcus Brown Holding Co.* v. *Feldman*, 256 U. S. 170 (1921), and *East New York Savings Bank* v. *Hahn*, 326 U. S. 230 (1945).

As we have noted, the statute involved in *Twentieth Century Associates* v. *Waldman, supra,* and the statute in the instant case are identical except for the kinds of property with which they deal. As the Court of Appeals held (*ante,* p. 5), the decision in that case establishes the constitutional validity of the Emergency Business Space Law which is here involved. We note, also, that the business rent law was held not to violate the due process clause in *Finn* v. *415 Fifth Ave. Co.*, 153 F. (2d) 501 (2nd Circ., 1946), cert. den. 328 U. S. 838 (1946).

As in *Twentieth Century Associates* v. *Waldman, supra,* no federal question is involved in the instant case. Petitioner concedes (Petition, p. 7): "It has been repeatedly held that the State in the exercise of its police power has a right to pass laws which affect pre-existing contracts of its citizens." Petitioner then asserts: "That principle, however, has never been extended to include contracts between a citizen and the State or any of the State's subdivisions."

This assertion is contrary to a well-established principle of constitutional law. In 12 Corpus Juris, §603, pp. 991-992, this principle is stated in the following language:

> "All contracts, whether made by the state itself, by municipal corporations, or by individuals, are subject to be interfered with, or otherwise affected by, subsequent statutes enacted in the bona fide exercise of the police power, and do not, by reason of the contracts clause of the constitution, enjoy any immunity from such legislation."

This principle has been reaffirmed by many authorities. *Faitoute Co.* v. *Asbury Park,* 316 U. S. 502 (1942); *Northern Pacific Railway* v. *Duluth,* 208 U. S. 583 (1908); *Manigault* v. *Springs,* 199 U. S. 473 (1905); *State of New York* v. *Gebhardt,* 151 F. (2d) 802 (2nd Circ., 1945), cert. den. *sub nom. Bankers Trust Co.* v. *New York,* 327 U. S. 788 (1946); *Bowen* v. *City of Schenectady,* 136 Misc. 307 (Sup. Ct., Schenectady Co., 1930), aff'd 231 App. Div. 779 (3rd Dept., 1931); *Hite* v. *Cincinnati I. & W. R. Co.,* 284 Ill. 297, 119 N. E. 904 (Sup. Ct., Ill. 1918).

In 1944, when the lease was about to expire, The City of New York was in the same predicament as other tenants of office space. The "abnormal scarcity" of available office space was noted in the report of the City's Director of Real Estate to the Board of Estimate (R. 252-256). The conditions which confronted the City were precisely those which impelled the Legislature to enact the emergency rent laws. As is pointed out by the Court of Appeals (*ante,* p. 6), it is clear from a reading of L. 1945, ch. 314, §8, that the Legislature intended to extend the protection of the statute to agencies of the City when they are occupants of office space.

Under the authorities which we have cited, the statute in question offends neither the contracts clause of the Constitution nor the due process clause of the 14th Amendment.

CONCLUSION

The petition for a writ of certiorari should be denied.

May 10, 1949.

Respectfully submitted,

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